

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

ORDER NO. 2001-174

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
THE CITY OF SAN DIEGO
TECOLOTE CANYON SEWAGE SPILL TO MISSION BAY**

The San Diego Regional Water Quality Control Board, (hereinafter SDRWQCB), having held a public hearing on June 13, 2001, to hear evidence and comments on the allegations contained in Complaint No. 2001-99, dated April 19, 2001, and on the recommendation for administrative assessment of Civil Liability in the amount of \$1,589,000 finds as follows:

1. Between at least February 19 and February 28, 2001 the City of San Diego discharged 1,500,000 gallons of sewage upstream of the Point Loma Wastewater Treatment Plant to Tecolote Creek, a tributary to Mission Bay. The spill caused pollution and nuisance conditions in Tecolote Creek and Mission Bay.
2. The City negligently failed to detect the spill until February 28, 2001. The undetected spill resulted in a public health risk to recreational users of the affected receiving waters because there were no warnings of pollution posted.
3. The sewage spill occurred as a result of the City's negligent failure to provide proper preventive maintenance to its sewage collection system.
4. The sewage spill lasted for nine days because the City failed to properly handle a telephone report of the spill on February 19, 2001.
5. The sewage spill lasted for an additional six days because the City knowingly failed to conduct a patrol of the remote canyon scheduled for February 23, 2011. The City's failure to conduct the canyon patrol was in knowing violation of Order No. 91-68 (based on the City's stipulation that it would patrol all canyons with sewer lines after significant rainfall events as a result of the City's past history of undetected sewage spills in canyons).
6. Prohibition A.1 of Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewering Agencies* states that the discharge of sewage from a sanitary sewer system from any point upstream of a wastewater treatment plant is prohibited.
7. Consideration of the factors required by California Water Code 13385, as addressed in *Technical Analysis, Proposed Administrative Civil Liability*

- Contained in Complaint No. 2001-99, City of San Diego, Tecolote Canyon Sewage Spill to Mission Bay, Noncompliance with Order No. 96-04, General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies, April 19, 2001, supports the assessment of civil liability in the amount of \$1,589,000 based on \$1.00 per gallon for 1,499,000 gallons discharged but not cleaned up (1,500,000 minus the first 1,000 gallons discharged) and \$10,000 per day for nine days.*
8. The SDRWQCB incurred costs totaling \$20,080 which includes field investigations, preparation of enforcement documents, preparation for and attendance at meetings, supplemental environmental project review and ranking, and public hearings.
 9. The “Mission Bay Human Pathogenic Viruses and Epidemiology Combined Study (Epidemiology Study Contribution)” described in Supplemental Environmental Project (SEP) Application Form, dated July 23, 2001 and revised on September 4, 2001 (Appendix A), for this project will provide useful information regarding water contact and human illness in Mission Bay, which cannot be obtained through traditional bacteriological sampling. This project rated high when compared to similar projects contained in the Supplemental Environmental Project Library.
 10. The “Mission Bay Contaminant Dispersion Study” described in Supplemental Environmental Project (SEP) Application Form, dated August 9, 2001 and revised on September 26, 2001 (Appendix B), will provide useful information regarding the movement of contaminants within the eastern portion of Mission Bay to better link contamination events to specific sources. This project rated high when compared to similar projects contained in the Supplemental Environmental Project Library.
 11. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Division 13, Chapter 3, Section 21000 et seq.) in accordance with Section 15308 of the CEQA Guidelines in Title 14 of the California Code of Regulations to ensure the protection of the environment.

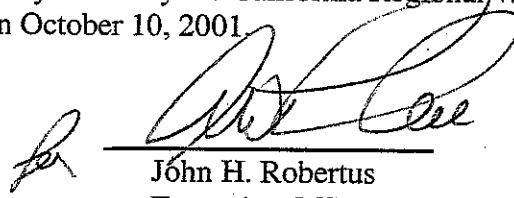
IT IS HEREBY ORDERED that civil liability is imposed on the City of San Diego in the amount of one million five hundred eighty nine thousand dollars (\$1,589,000) of which four hundred eighty nine thousand dollars (\$489,000) is payable immediately to the State Water Resources Control Board for deposit into the State Water Pollution Cleanup and Abatement Account.

1. The remaining portion of the civil liability, one million one hundred thousand dollars (\$1,100,000) shall be suspended upon successful completion of the following:

- a. The City of San Diego shall, by November 9, 2001, submit to the Regional Board proof of payment to the Southern California Coastal Water Research Project (SCCWRP) in the amount of \$700,000 for completion the Mission Bay Epidemiology Study.
 - b. The City of San Diego shall, by November 9, 2001, deposit \$400,000 into a secure interest bearing account yielding a competitive interest rate, with a financial institution acceptable to the Regional Board. The escrow account shall name the City of San Diego and the California Regional Water Quality Control Board, San Diego Region as parties. The purpose of the escrow account is to hold funds to be disbursed to a contractor, acceptable to the Regional Board, for completion of the Mission Bay Contaminant Dispersion Study. The Executive Officer of the Regional Board and the Assistant Executive Officer shall be agents of the Regional Board to authorize payments from the account to the contractor. The escrow agreement shall specify that no payments shall be made from the account unless authorized in writing by the agents of the Regional Board. In addition to the \$400,000 deposited in escrow, the City of San Diego shall pay all fees associated with the establishment and maintenance of the escrow account. All interest earned on the monies deposited into the account shall be returned to the State Water Resources Control Board for deposit into the State Water Pollution Cleanup and Abatement Account upon completion of the Mission Bay Contaminant Dispersion Study.
 - c. All projects must be completed by the completion date in Table A. Failure to complete a project, or late or inadequate completion of a project as described in Appendix A and B or this Order, will result in the total project cost becoming due and payable, to the State Water Pollution Cleanup and Abatement Account.
2. Minor modifications to the scope of work contained in each supplemental environmental project shall be approved by the Regional Board upon written request. Completion dates cannot be changed.
3. The City of San Diego must submit written verification that each project or project subtask has been completed and an exact accounting of monies spent on each project to the Regional Board within 30 days of completion of the project or subtask. If, upon completion of each project, the total project cost of each project as described in Table A is not expended, the remainder of the monies allocated for that project shall be paid to the State Water Pollution Cleanup and Abatement Account.

4. Every public or published mention or reference by the City of San Diego, its officials, or its employees, to the above projects, whether written or oral, regardless of medium, shall include a clear and prominent statement that the project is undertaken or funded by the City of San Diego in order to satisfy the conditions for suspension of a portion of the civil liability assessed against the City of San Diego for violation of an order of the SDRWQCB pursuant to Administrative Civil Liability Order No. 2001-174 of the SDRWQCB.

I John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability issued by the California Regional Water Quality Control Board, San Diego Region on October 10, 2001.



John H. Robertus
Executive Officer

Table A
Supplemental Environmental Projects

Project Name	Project Description	Total Project Cost	Start Date	Completion Date	Project Trustee
Mission Bay Pathogenic Viruses and Epidemiology Combined Study (Epidemiology Study Contribution)	See Appendix A	\$700,000	April 1, 2002	December 31, 2004	City of San Diego
Mission Bay Contaminant Dispersion Study	See Appendix B	\$400,000	October 10, 2001	May 1, 2003	City of San Diego